

Writing A Better Ordinance

Presented By
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OLD SOLUTIONS IN NEW TIMES

... why they no longer work

Enabling Laws

Utah State Code Annotated (U.C.A.) References

Public Health

U.C.A. 10-7-3

Each municipality shall participate in and cooperate with the local health department operating in the county in which the municipality is located. The municipality shall cooperate with the board of health of the local health department in the adoption of ordinances necessary for the protection of public health.

Signs, Advertising material, Placards, Handbills, Flags and Banners on public properties

U.C.A. 10-8-26, 10-8-27, 10-8-28

Traffic regulations

U.C.A. 10-8-30

They may regulate the movement of traffic on the streets, sidewalks and public places, including the movement of pedestrians as well as of vehicles, and the cars and engines of railroads, street railroads and tramways, and may prevent racing and immoderate driving or riding.

Regulation of Sexually Oriented Businesses

U.C.A. 10-8-41.5

Enabling Laws

Nuisances

U.C.A. 10-8-60

They may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

Cruelty to animals, Livestock at large, Dogs, Pigsties, privies, other offensive establishments

U.C.A. 10-8-59, 10-8-64, 10-8-65, 10-8-67

Noise abatement

U.C.A. 10-8-76

They may prevent the ringing of bells, blowing of horns and bugles, crying of goods by auctioneers and others, and the making of other noises, for the purpose of business, amusement or otherwise, and prevent all performances and devices tending to the collection of persons on the streets or sidewalks of the city.

Enabling Laws

“The Enabling Law”

U.C.A. 10-8-84

The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by [Title 10-8], and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with U.C.A. Section 10-3-703.

Cities may regulate many other areas under U.C.A. Section 10-8.



Enabling Laws

Land Use Regulations

U.C.A. 10-9a-102(2)

...municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

Public Process

City or County Planning Commissions, depending on jurisdiction, must conduct at least one public hearing and make a recommendation to the legislative body on all land use ordinances (U.C.A. 10-9a-302, 17-27-302).

All public meetings to discuss a new ordinance must be noticed in accordance with Utah Open and Public Meetings act (e.g. at least 24 hours notice including date, time, place) and posted in at least three public places or on the jurisdiction website (U.C.A. 10-9a-205, 17-27a-205).

Notice of the first public hearing must be

- Sent to affected entities at least 10 days prior to the public hearing.

- Posted in three public places, or on the jurisdiction website; and

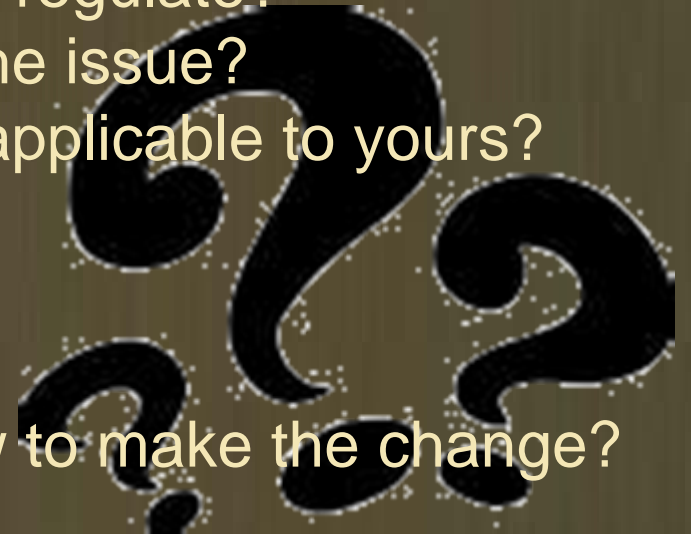
- Published in a newspaper of general circulation at least 10 days prior, and

 - Published on the Utah Public Notice Website at least 10 days prior, or

 - Mailed to affected property owners and adjacent property owners as required by local ordinances (U.C.A. 10-9a-205, 17-27a-205)

Begin the Beginning

- What are you wanting to regulate?
- Why are you wanting/needing to change regulations?
- What goals and policies (i.e. plans) do you have?
- What regulations do you have in place?
- What of your current regulations are salvageable?
- What court cases have addressed the issue?
- What Federal Regulations may apply to the issue?
- What does State Code allow you to regulate?
- How have other Cities addressed the issue?
- Are other jurisdiction's regulations applicable to yours?
- Who will administer the regulation?
- What appeal process will there be?
- What penalties will there be?
- What process do you have to follow to make the change?



Ordinance Structure (Utah Code Ann. 10-3-704)

- Ordinance Number
- Title - indicating nature
- Preamble indicating reason
- Ordaining Clause
- Body
- Penalties or reference to
- Effective Date
- Administrative Signature
- Attestation by Recorder

Santaquin includes role call vote record

09-01-2010

Ordinance sample for ULCT

Whereas

Whereas

Now therefore be it ordained by.

Section I. Regulations Blah, blah, blah
and yaddah yaddah

Section II. Penalties

Section III. Passed and approved on XX
and to be effective on XX after required
postings.

Mayor Signature



Recorder Signature

Whereas . . . What is a General Plan?

The General Plan is a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality (U.C.A. 10-9a-103).

It must include the following elements (U.C.A. 10-9a-403):

- * Land Use Element
- * Transportation and Traffic Circulation Element
- * Moderate Income Housing Element (Needs Assessment)
- * Environmental Element

It states a City's major objectives in terms of goals, and policies to reach those goals. It is "an advisory guide for land use decisions, the impact of which [is] determined by ordinance" (U.C.A. 10-9a-405).

The revision of the ordinances, capital budgets, etc. are the tools used to achieve the desired purposes.

Everybody's Doing It

It's okay to ~~steal~~ ^{KNOW} other jurisdiction regulations.

Things to consider when researching:

Has a court action occurred on the regulations?

What was the other jurisdiction trying to accomplish? Is it the same purpose you have?

What research was used to create the ordinance? Can that data be used in your situation?

In what environment is the ordinance applied?

How applicable is the regulation to your situation?

What has been the result in that jurisdiction?

Does it fully accomplish what you want it to?

Do you have the means to enforce (politically, financially) the regulation in your jurisdiction?

Simple Body Language

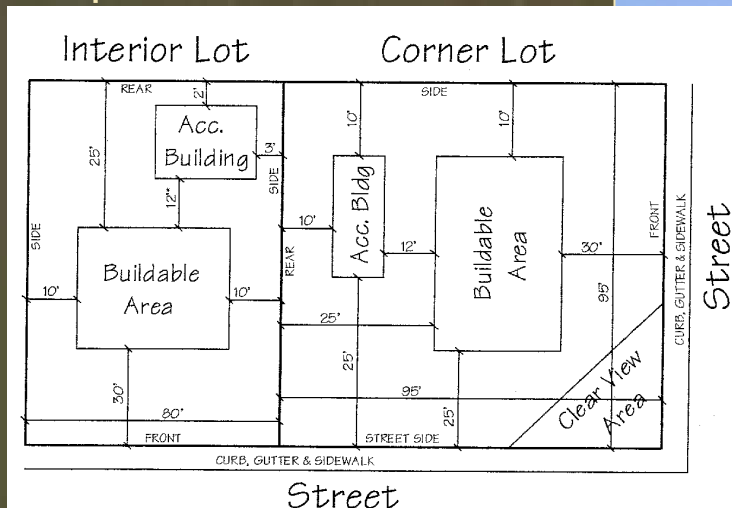
Use short sentences.

Use plain language.

Use pictures.

50 percent of American adults are unable to read an eighth grade level book. — Jonathan Kozol, “Illiterate America”

Graphic of Setbacks



Agrarian design



Main Street Fenestration

“Unclear language in an ordinance provides an opportunity for both confusion and legal challenges” — Carolyn Braun, AICP, Drafting Clear Ordinances: Do’s and Don’ts

Body Form

Use a consistent outline and formatting method throughout your code. (e.g. Roman numerals vs Alpha-numerical indexing, underlined, bolded or regular text headings) This can help the regulations be more readable.

A. Commercial Parking Regulations

1. Required Parking Amounts.
 - a. Minimum parking shall be . . .
 - b. ADA parking shall be . . .
2. Landscaping in Parking Areas.

B. Commercial Architecture Standards

1. Roof Design
2. Materials

Reducing Body Fat

Using charts and tables can help convey regulations easier and help to reduce white space.

Lot Standard	Ag	R-Ag
Max. Unit Density	1 unit per 20 Acres	1 unit per 5 Acres
Min. Lot Area	1/2 Acre	5 acres
Min. Lot Frontage	30 feet	100 feet

Reducing Body Fat

[illegible]

Purpose and Intent

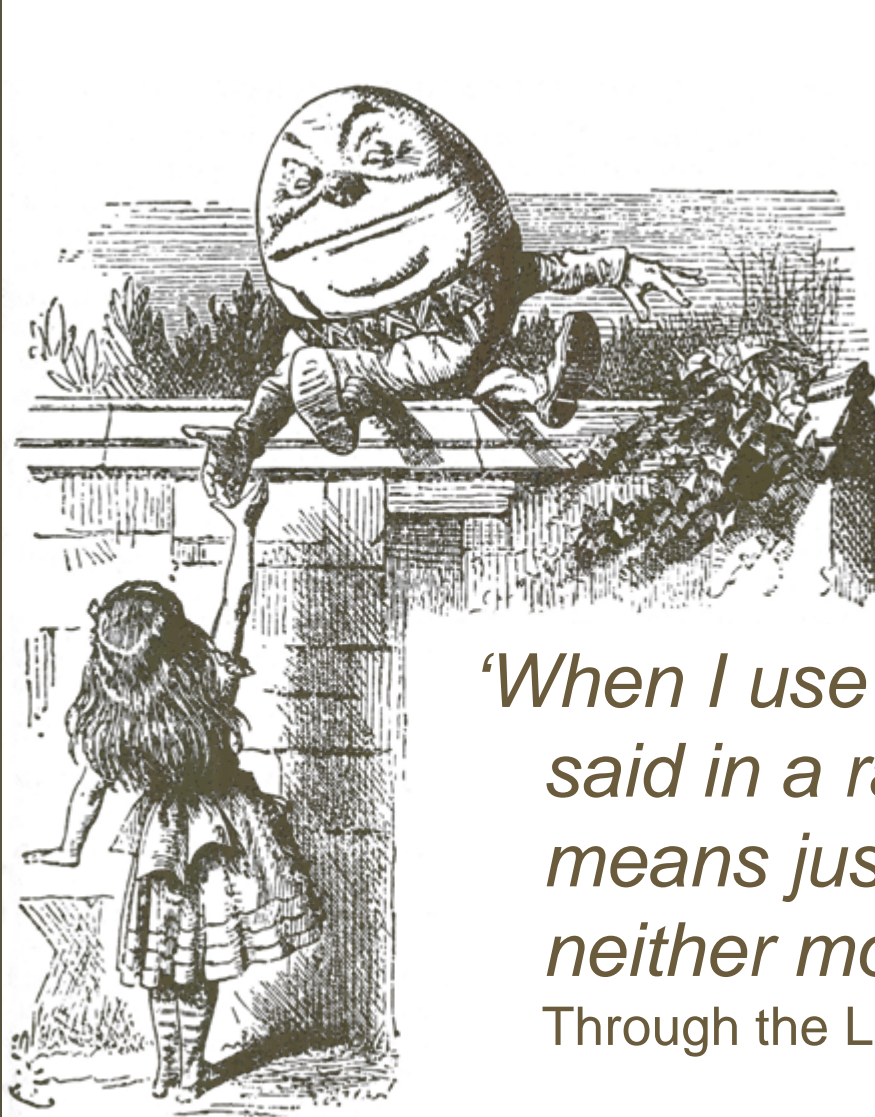
Purpose statements may be included as a paragraph or section within the body of the ordinance.

Can also be inserted as clarifying statements within the regulations being adopted.

A. Developments in hillside areas shall conduct watershed, geologic hazard, and fire hazard analysis as part of their development review application and must implement study recommended mitigation strategies.

(Intent: New developments must understand how the proposed development will be impacted by nearby eminent natural hazards and construct appropriate measures for the protection of life and safety of future property owners within the project.)

Coming to Terms



Definitions should be concise, clear and should not contain hidden regulations.

May be very encompassing or specific but should not be overly broad.

‘When I use a word,’ Humpty Dumpty said in a rather scornful tone, ‘it means just what I choose it to mean - neither more nor less.’ - Lewis Carroll, *Through the Looking Glass*

Coming to Terms

Do the terms being used have common knowledge meanings (i.e. any reasonable person would understand)?

(e.g. Noise, Church, Property Line, Utilities)

Are the meanings of words commonly known among industry professionals?

(e.g. Bypass, Fenestration, Dwelling Unit, Effluent)

Are the meanings of words already established by Law?

(e.g. Religious Institution, Residential Facility for Elderly, Social Club)

Do you need to define the term being used?

(e.g. Mixed-Use, Indecency, Weed, Family)

Ordinance Application

Who will be responsible for applying the law?

Mayor, City Manager, Department Director, “or Designee”,
Planning Commission, Land Use Authority

Do not include language such as “or other requirements as determined by.”

This leaves cities open to being arbitrary and capricious. All laws must be uniformly applicable.

Ordinances can contain flexibility but it must be clear what the extent of the flexibility is and what standards will be used to determine how much flexibility is provided.



Ordinance Application

Who will be able to interpret the law?

City Council, Mayor, City Manager, Department Director “or Designee”, Planning Commission, Land Use Authority, Legal Counsel

How will it be applied to existing conditions?

Amortization Period, Trigger Mechanism, Grandfathering, Retro-active

When will the ordinance take affect? (U.C.A. 10-3-711)

- (1) Before an ordinance may take effect, the legislative body of each municipality adopting an ordinance, shall:
 - (a) deposit a copy of the ordinance in the office of the municipal recorder; and
 - (b) (i) publish a short summary of the ordinance at least once:
 - (A) in a newspaper published within the municipality; or
 - (B) if there is no newspaper published within the municipality, in a newspaper of general circulation within the municipality; or
 - (ii) post a complete copy of the ordinance:
 - (A) for a city of the first class, in nine public places within the city; or
 - (B) for any other municipality, in three public places within the municipality.

Enforcement

What will the Penalties Be? (U.C.A. 10-3-703)

Civil or Criminal penalties may be established except,
“A municipality may not impose a civil penalty and adjudication for the violation of
a municipal moving traffic ordinance (U.C.A. 10-3-703(2)(b))

Who will be responsible for enforcing the law?

Police Department (Criminal enforcement) or
Code Enforcement staff (Civil enforcement)

What appeal process is available to someone adversely affected by the new regulation?

Administrative, Appeals Board, Appeals Authority,
Court, Media



Questions and Possible Answers

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